

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) KCX-1068 (19800)
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on _____</p> <p>Signature _____</p> <p>Typed or printed name _____</p>		Application Number 10/723,761 Filed November 26, 2003 First Named Inventor John Gavin MacDonald Art Unit 3761 Examiner Ginger T. Chapman

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

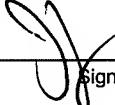
This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- applicant/inventor.
- assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)
- attorney or agent of record.
Registration number 45,675
- attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____



Signature
Jason W. Johnston

Typed or printed name
864-271-1592

Telephone number
March 5, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

<input checked="" type="checkbox"/>	*Total of <u>1</u> forms are submitted.
-------------------------------------	---

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

PATENT
ATTORNEY DOCKET NO: KCX-1068 (19800)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application: MacDonald et al.)	Examiner: Ginger T. Chapman
)	
Serial No: 10/723,761)	Group Art Unit: 3761
)	
Filed: November 26, 2003)	Dep. Acct. No: 04-1403
)	
Confirmation No: 9700)	Customer No: 22827
)	
Title: Odor Control Agents in Personal)	
Care Products)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

In conjunction with the filing of a Notice of Appeal, Applicants respectfully request review of the basis of the rejections of the pending claims of the above-captioned application. A Final Office Action dated December 4, 2007 has been issued.

Currently, claims 17-20 and 22-31, including independent claims 17 and 29, are pending in the present application. Independent claim 17, for example, is directed to a personal care product comprising a liquid impervious baffle, a liquid pervious liner, an absorbent core positioned between the baffle and the liner, and an odor sorbent substrate. The substrate is coated with a durable activated carbon ink that consists essentially of activated carbon particles and a binder.

Independent claim 17 was rejected under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 3,939,838 to Fujinami, et al. in view of EP348978 to Tanzer, et al.

Fujinami, et al. is directed to an article that includes a material for deodorizing menstrual fluid. As correctly noted by the Examiner, however, Fujinami, et al. fails to disclose certain aspects of independent claim 17, including an odor sorbent substrate wrapped around an absorbent core.

Nevertheless, Tanzer, et al. was combined with Fujinami, et al. in an attempt to render obvious independent claim 17. Specifically, the Office Action asserted that the limitation of an odor sorbent substrate wrapped around an absorbent core was disclosed in Figs. 11 and 12 of Tanzer, et al. Fig. 11, for instance, is re-produced below.

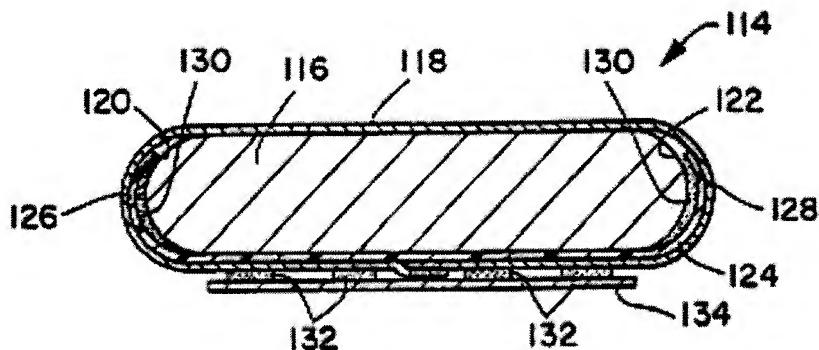


FIG. 11

As shown, Fig. 11 illustrates an absorbent article 114 that contains an absorbent 116, a baffle 124 and a fluid-permeable cover 118. The Office Action asserts that the "deodorizing mixture 130" is "coated" onto a substrate that is wrapped around the absorbent 116 and positioned between the baffle 124 and absorbent 116, such as required by independent claim 17.

Contrary to the assertions in the Office Action, however, the deodorizing mixture 130 of Tanzer, et al. is *not* coated onto an odor sorbent substrate that is wrapped

around the core and positioned between the baffle and the core. Instead, the deodorizing mixture 130 is only positioned in “the cavities or spaces” between surfaces of the core and baffle. As would readily be understood by one of ordinary skill in the art, particles that are simply positioned between the “spaces” of two materials are not “coated” onto a substrate as required by claim 17. Nevertheless, to the extent that this mixture 130 is coated onto anything, it is simply “coated” onto the absorbent 116 – not a **separate odor sorbent substrate that is wrapped around the absorbent 116**, such as required by independent claim 17.

In any event, Tanzer, et al. differs in several other respects from independent claim 17. For example, the particle mixture of Tanzer, et al. specifically requires “basic particles” as a substantial component of the deodorizing mixture. The “consisting essentially of” language of independent claim 17 excludes such a substantial presence of basic particles from the claimed activated carbon ink. Although recognizing this deficiency, the Examiner nevertheless asserted that it would have been obvious to remove the basic particles from the anhydrous mixture of Tanzer, et al. Applicants respectfully disagree. Tanzer, et al. employs the basic particles in an amount between 25 wt.% and 99 wt.% of the deodorizing mixture. The reason that Tanzer, et al. requires such a high percentage of basic particles stems from one of its primary purposes – *to control both acidic and neutral odors*. If such a substantial particle component were removed from the deodorizing mixture of Tanzer, et al., however, this purpose would be completely vitiated.

The Office Action responds to this argument by noting that Fujinami, et al. is relied upon for the “ink”, and that Applicants “cannot attack one reference but rather

must address the combination of references.” Applicants respectfully note, however, that a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. See M.P.E.P. § 2143.03(VI).

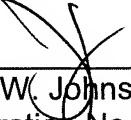
Applicants emphasize that the issue in conducting an analysis under 35 U.S.C. § 103(a) is not whether a theoretical re-design of a device is *possible* or that it might be *obvious to try* the modification. Instead, the issue hinges on whether the claimed invention *as a whole* would have been obvious. In this case, the Office Action parsed and dissected only certain portions of the references, and then used these dissected portions in a way that would require a substantial reconstruction of the references. Clearly, the Office Action is using the present application as a “blueprint” for selectively re-designing the reference, which is improper under 35 U.S.C. § 103. Thus, for at least the reasons set forth above, Applicants respectfully submit that one of ordinary skill in the art would not have found it obvious to modify the references n the manner suggested in the Office Action.

It is believed that the present application is in complete condition for allowance and favorable action, therefore, is respectfully requested. Examiner Chapman is invited and encouraged to telephone the undersigned, however, should any issues remain after consideration of this request.

Please charge any additional fees required by this request to Deposit Account No. 04-1403.

Appl. No. 10/723,761
Pre-Appeal Request dated Mar. 5, 2007
Reply to Office Action of Dec. 4, 2006

Respectfully requested,
DORITY & MANNING, P.A.



Jason W. Johnston
Registration No. 45,675
DORITY & MANNING, P.A.
P.O. Box 1449
Greenville, SC 29602-1449
Phone: (864) 271-1592
Facsimile: (864) 233-7342

Date: 3/5/07